

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: June 2013 – O-201

DATE: June 18, 2013

TO: Subcommittee on Examinations

FROM: Lisa Jeong Cummins, Director for Examinations

**SUBJECT: JUDICIAL COUNCIL’S ACCESS AND FAIRNESS ADVISORY
COMMITTEE RECOMMENDATIONS RELATIVE TO
EXAMINATIONS**

BACKGROUND

The Judicial Council of California’s Access and Fairness Advisory Committee and the State Bar of California’s Office of Legal Services, Access & Fairness Programs, Center for Access & Fairness, with input from the deans of 17 California law schools approved by the American Bar Association (ABA), worked together as an Advisory Committee to follow-up on recommendations made to the Judicial Council in 1996 to address gender bias and other fairness issues in law schools as part of the council’s ongoing effort to improve and enhance the fair administration of justice in California. In its 2008 report, the Advisory Committee made recommendations to the Judicial Council “to encourage enhancement of law school education and the development of effective and compassionate lawyers who directly influence the quality of the California justice system.” Among those recommendations was the following:

“Request that the Judicial Council urge the Board of Governors and the Committee of Bar Examiners of the State Bar of California to collaborate, as appropriate, with law school deans regarding how the bar examination might incorporate issues of gender and other types of bias into bar examination questions, as well as other issues of format and content of the examination.”

DISCUSSION

For security reasons and to protect the integrity of all examinations administered by the Committee of Bar Examiners (Committee), proposed examination questions are not shared, disclosed, or discussed with law school deans. Committee policy already has in place procedures to ensure that examination questions are fair and unbiased. To this end, the Committee’s staff and independent contractors who develop examination questions, as well as the Committee itself during the question selection process, carefully review all examination questions on an ongoing basis for potential bias issues

in the wording or content of each question. In addition, one of the ongoing goals of the Subcommittee on Examinations is to consider conducting psychometric studies to ensure the reliability, validity and fairness of examinations administered by the Committee.

In addition, to do as the Advisory Committee suggests: "... incorporate issues of gender and other types of bias into bar examination questions, as well as other issues of format and content of the examination," could change the basic nature of the bar examination, which is designed to test on minimum competence in the law in the 13 subject areas designated by the Committee. To add language into an essay question that includes bias-related facts or questions, while certainly noteworthy, would be a departure from standard essay writing guidelines. Generally, when drafting an essay question an author should: 1) be clear, accurate, logical, simple and brief; 2) make every fact matter because applicants will try to use every fact whether it is related to the call of the question or not and 3) leave out non-essential facts because they create "noise" that detracts from trying to assess the skills that should be tested.

RECOMMENDATION

While the recommendations of the Judicial Council's Access and Fairness Advisory Committee are appreciated, further discussions with law school deans regarding how the bar examination might incorporate issues of gender and other types of bias into bar examination questions, as well as other issues of format and content of the examination, does not appear to be an appropriate course to take at this time. It could, however, be a subject for discussion with the deans during a meeting of the Law School Council or Law School Assembly.

PROPOSED MOTION

Should the Subcommittee on Examinations agree with the above recommendation, the following motion would be appropriate:

Move that the Judicial Council of California's Access and Fairness Advisory Committee report and recommendations relative to examinations be received and filed and that no further action be taken relative to the recommendations from the Advisory Committee to the Committee concerning the incorporation of issues of gender and other types of bias into bar examination questions; and that this issue be placed on the agenda of a future Law School Council or Law School Assembly Meeting for further discussions with the deans as may be appropriate.